



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69992; File No. SR-NYSE-2013-51)

July 16, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List to Revise the Credits for Certain Designated Market Maker Transactions and Revise the Annual Trading License Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 3, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to revise the credits for certain Designated Market Maker (“DMM”) transactions and revise the annual trading license fees. The Exchange proposes to implement the fee changes effective July 3, 2013. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to revise the credits for certain DMM transactions and revise the annual trading license fees. The Exchange proposes to implement the fee changes effective July 3, 2013.

DMM Rebates³

DMMs are currently eligible for a per share rebate when adding liquidity in shares of each More Active Security⁴ if the More Active Security has a stock price of \$1.00 or more, the DMM meets both the More Active Securities Quoting Requirement⁵ and the More Active Securities Quoted Size Ratio Requirement,⁶ and the DMM's providing liquidity meets certain

³ Rebates are applied when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes; and (iii) when executing trades in the crowd and at Liquidity Replenishment Points. Rebates do not apply to executions at the open. See Price List at n.6.

⁴ A "More Active Security" is one with an average daily trading volume in the previous month equal to or greater than one million shares. See Price List.

⁵ A DMM meets the "More Active Securities Quoting Requirement" when a More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month. See Price List.

⁶ A DMM meets the "More Active Securities Quoted Size Ratio Requirement" when the DMM Quoted Size for an applicable month is at least 15% of the NYSE Quoted Size. The "NYSE Quoted Size" is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size" is calculated by multiplying the average

thresholds, as follows:

- \$0.0026 per share if the DMM's providing liquidity is 15% or less of the NYSE's total intraday adding liquidity in each such security for that month;⁷
- \$0.0030 per share if the DMM's providing liquidity is more than 15% but less than or equal to 30% of the NYSE's total intraday adding liquidity in each such security for that month; and
- \$0.0029 per share if the DMM's providing liquidity is more than 30% of the NYSE's total intraday adding liquidity in each such security for that month.

The \$0.0029 per share rebate is applicable to all of the member organization's adding liquidity in each such security for that month, not just the incremental liquidity that is more than 30% of the NYSE's total intraday adding liquidity.⁸ The Exchange proposes to eliminate the third pricing threshold and modify the second pricing threshold so that a DMM will receive a rebate of \$0.0030 per share if the DMM's providing liquidity is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month. The \$0.0030 per share rebate is applicable to all of the member organization's adding liquidity in each such security for that month, not just the incremental liquidity that is more than 15% of the NYSE's total intraday adding liquidity. For example, if a DMM meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement, and the DMM's

number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO. See Price List at n.7.

⁷ The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers and DMMs. See Price List.

⁸ See Exchange Act Release No. 68021 (Oct. 9, 2012), 77 FR 63406, 63407 n.9 (Oct. 16, 2012) (SR-NYSE-2012-50).

providing liquidity is 1.6 million shares in a security with NYSE total intraday adding liquidity of 10 million shares, then the DMM will be eligible for a rebate of \$0.0030 per share for all 1.6 million shares. Otherwise, the DMM will receive a per share rebate of \$0.0026.

Trading Licenses

Currently, the Exchange charges an annual fee of \$40,000 per license for the first two trading licenses held by a member organization and \$25,000 per license for each additional trading license held by a member organization. The fee for trading licenses issued after January 1, 2013 is prorated for the portion of the year during which the trading license will be outstanding. If a trading license is in place for 15 or fewer calendar days in a calendar month, proration for that month is at a flat rate of \$100 per day with no tier pricing involved.⁹ If a trading license is in place for 16 or more calendar days in a calendar month, proration for that month is computed based on the number of days as applied to the applicable annual fee for the license.¹⁰

The Exchange proposes to amend its trading license fees for additional trading licenses issued to a member organization between July 1, 2013 and December 31, 2013. If a member organization is issued additional trading licenses between July 1, 2013 and December 31, 2013, and the total number of trading licenses held by the member organization between July 1, 2013 and December 31, 2013 is greater than the total number of trading licenses held by the member organization on July 1, 2013, then the member organization will not be charged a prorated fee for the period from July 3, 2013 to December 31, 2013 for those additional trading licenses above the number the member organization held on July 1, 2013. For example, if a member organization holds 30 trading licenses on July 1, 2013 and between July 3, 2013 and December

⁹ See Price List at n.16.

¹⁰ Id.

31, 2013, the member organization holds 33 trading licenses, the member organization will not be charged a prorated fee for those three additional trading licenses. For a firm that becomes a member organization after July 1, 2013, the firm will be assigned a baseline of one trading license and charged a prorated fee for that license for the remainder of 2013; any trading licenses in addition to the first trading license will not be charged a prorated fee for the period from July 3, 2013 to December 31, 2013.

If a member organization merges with another member organization on or after July 1, 2013, the total combined number of trading licenses held by each member organization on July 1, 2013 will be considered the baseline number of trading licenses for the successor member organization. For example, if Firm A holds five trading licenses on July 1, 2013 and Firm B holds eight trading licenses on July 1, 2013, and Firm B acquires Firm A on August 1, 2013, then Firm B, as the successor member organization, will have a baseline of 13 trading licenses as of August 1, 2013.

The Exchange also proposes to correct a typographical error in footnote 15 of the Pricing List, which relates to a credit for floor broker licenses. The footnote should refer to November and December 2012, not November and December 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that with respect to the DMM rebate for providing liquidity, eliminating the third pricing threshold and modifying the second pricing threshold is reasonable because the Exchange believes the rebate for the third pricing threshold did not incent DMMs to reach that level of providing liquidity as intended.¹³ The Exchange believes that the remaining two pricing thresholds, as modified, are at a level that will encourage greater liquidity and competition in actively traded securities on the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because all DMMs will be eligible for the higher rebate. The Exchange believes it is equitable and not unfairly discriminatory to allocate a higher rebate to DMMs than other member organizations because DMMs have higher quoting obligations, and in turn provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants.

The Exchange believes it is reasonable to offer a temporary reduction in the prorated fees for annual trading licenses because it will encourage member organizations to hold additional trading licenses, which will increase the number of market participants trading on the floor of the Exchange, which will promote liquidity, price discovery, and the opportunity for price improvement for the benefit of all market participants. The Exchange also believes it is reasonable to offer a temporary fee reduction because it will provide member organizations with greater flexibility in managing their personnel, especially in summer months when member organizations tend to experience greater staff rotation. The Exchange further believes that the July 1 date selected by the Exchange as a baseline for calculating additional licenses is reasonable because it is the day before the effective date of the fee change. The Exchange believes the proposed change is equitable and not unfairly discriminatory because all member

¹³ See supra note 8.

organizations will be able to take advantage of the temporary fee reduction.

The Exchange believes that it is reasonable to assign new member organizations a baseline of one trading license because this will incent firms to become Exchange member organizations, thereby encouraging trading activity on the Exchange, which benefits all market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the discount is temporary and firms that become member organizations in the latter half of 2013 will be subject to the same trading license fees as other member organizations beginning in 2014.

The Exchange believes that, in the case of a merger of member organizations, it is reasonable to assign the successor member organization a baseline of the combined number of trading licenses held by each member organization on July 1, 2013, effective as of the date of the merger, so that the successor member organization's baseline reflects the combined operations. The Exchange believes that the alternative – i.e., counting only the number of trading licenses held by the successor member organization on July 1, 2013 prior to the merger – would give such member organization an unfair advantage over a member organization that had not undergone a business combination, in that the successor member organization would not have to pay additional fees for the trading licenses gained through the merger for the remainder of the year. The Exchange notes that trading licenses effectively acquired through a merger would not increase the total number of trading licenses on the Exchange, and therefore would not necessarily contribute additional trading activity. Moreover, the successor member organization will be free to eliminate any trading licenses not needed after the merger. Therefore, the Exchange believes its proposed approach to merging member organizations is equitable and not unfairly discriminatory.

The Exchange believes that correcting the typographical error in the Price List will add greater clarity for member organizations in understanding the annual trading license fees.

Finally, the Exchange believes that it is subject to significant competitive forces in setting its fees and credits, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes the revised pricing tiers for DMMs reflect the need for the Exchange to adjust financial incentives to attract order flow. In addition, the modification to the annual trading license fees will help to remove a burden on competition by making it easier for member organizations to appropriately staff the Floor, which is a key feature of the Exchange's structure for offering a fair and orderly market and competing with other exchanges. It will also make it more economical to become a member organization in the remainder of 2013. In addition, the Exchange does not believe the proposed approach to merging member organizations will burden competition because it is designed to avoid any unfair advantage a successor member organization could have in the absence of resetting the baseline of licenses under the proposed fee structure.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to

¹⁴ 15 U.S.C. 78f(b)(8).

be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or rebate changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2013-51 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2013-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

¹⁷ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2013-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2013-17471 Filed 07/19/2013 at 8:45
am; Publication Date: 07/22/2013]

¹⁸ 17 CFR 200.30-3(a)(12).